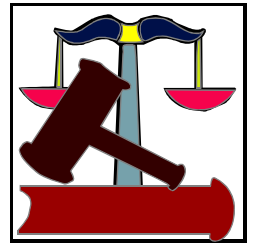


INSURANCE & LIABILITY ISSUES



INTRODUCTION

One of the most significant barriers to successful School-to-Careers implementation is the issue of liability. Employers often are reluctant to participate in School-to-Careers partnerships because of their potential liability if students are injured on the worksite. Employers ask questions such as whether their own worker's compensation policies cover such injuries; whether the added insurance costs may be charged to the School-to-Careers grant; or at what point does the insurance policy of the school cover such risk.

Unfortunately, there are no overarching answers to these questions. It is imperative, therefore, that the members of local partnerships squarely address these insurance questions. Since insurance companies can terminate coverage almost at-will as long as they provide prior notice, School-to-Careers partners must take pains to ensure that all School-to-Careers activities are covered under policies currently in effect.

As discussed herein, to the extent that the student is injured in the course of performing *work* in a School-to-Careers activity, the worker's compensation laws of New Mexico generally will apply. Other activities such as interning, job shadowing, career exploration, etc., may or may not be covered by the Public School Insurance Authority Act (22-2-6.2). The added cost for liability coverage for School-to-Careers activities, whether under workers' compensation or school insurance, is generally allocable to the local School-to-Careers grant. Significantly, School-to-Careers participants *cannot assume* that such insurance is in place. Attorneys for injured participants most likely would sue all members of the partnership, in search of the "deepest pockets." Thus, local School-to-Careers partners must resolve insurance and liability issues at the outset.



WORKERS' COMPENSATION

With few exceptions, workers' compensation coverage is universally required for employees in the State of New Mexico. Businesses which employ four or more workers are generally covered by worker's compensation (52-1-2).

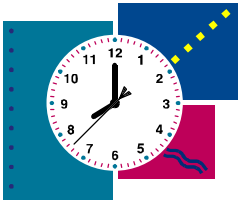
Coverage can be accomplished by having a workers' compensation insurance policy issued by a private insurance carrier or by the State Insurance Fund. Coverage also can be secured through a self-insurance program for individual employers, or groups of employers and the New Mexico Group Self Insurance Act (52-6-1) governs the terms of such coverage.

RECOMMENDED PRACTICES

The following practices should ensure that students involved in work-related learning as employees are covered by appropriate compensation coverage in the event that they are injured on the job. They also may serve to protect employers and schools from liability.

- For work-based learning components where a participant is paid and where his or her activities are controlled by the employer, School-to-Careers partners should *presume that workers' compensation coverage is required*.
- School-to-Careers partners developing work-based learning activities should confirm the extent of their coverage with the appropriate legal authority.
- Insurance carriers, including private insurance companies and the State Workers' Compensation Assigned Risk Pool, can provide a "Certificate of Insurance." The carriers routinely provide such certificates to a variety of businesses and individuals so you should have little difficulty in obtaining these certificates.
- When requesting certificates of insurance, you should ask carriers to notify you if the policy is cancelled. Policies are frequently canceled for non-payment of premium.
- Self-insured employers and members of a self-insurance group must file evidence of workers' compensation coverage, in the form of a certificate, with the Office of the Director.

If an employer believes that workers' compensation coverage is not required, the employer should be able to demonstrate specifically why the law does not mandate coverage in this situation. Employees are encouraged to consult an attorney or the Director of the State Workers' Compensation Administration.



LIABILITY ISSUES

BACKGROUND

Career awareness, career exploration, job shadowing, and unpaid work experience activities, through which School-to-Careers participants observe work, understand processes, or experience the work environment at the worksite, are all important activities in the School-to-Careers model. Employers should ensure that all participants engage in these activities in a safe manner. Consideration should be given to protecting educational institutions and employers from unnecessary liability. It has been reported that liability insurance carriers sometimes advise their corporate clients not to participate in such activities because insurers believe the activities will increase the firms' insurance risks.



RECOMMENDED PRACTICES

These practices are intended to reduce the likelihood of an incident that might cause injury to participants and to protect employers and schools from potential liability. The recommended practices also should help remove barriers to employer participation that arise from liability concerns voiced by employer liability insurance carriers.

- In the development of career exploration, career awareness, job shadowing, or unpaid work experience activities, School-to-Careers partners are encouraged to *create a written agreement* specifying the purposes and limitations of the activity, including:
- the amount of time to be committed to the activity (It should be limited to that required to achieve the desired objectives), and
- the activities in which the participant will engage (It is especially important to specify that the participants are not intended to do productive work or to operate as employees in any way).

It is recommended that appropriate steps be taken to limit risks to participants, including:

- safety training for the activity, and
- specific instruction about the activity and how participants are expected to conduct themselves.



INSURANCE & LIABILITY ISSUES

When insurance carriers express concern about these activities, it may be possible to communicate with the carriers, through the employer, to reassure them that the risk of the activity is limited. Carriers and their underwriters may assess risk by looking at:

- your written agreement;
- your safety training program;
- descriptions of how the activity will be supervised;
- other efforts to improve safety and reduce risk; and
- any industry information about the history of losses for comparable activity, (i.e., statistics).

